

file



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Notice of the Proposed
Revocation of the Well Drilling Permit (No. 5820)
of Christopher J. Olson, Eau Claire, Wisconsin

Case No. IH-99-11

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDER REVOKING WELL DRILLER'S PERMIT

Pursuant to due notice hearing was held on November 8, 1999, before Jeffrey D. Boldt, administrative law judge (the ALJ). The respondent appeared at hearing but did little to dispute the DNR's findings on any significant point. Accordingly, the ALJ orally revoked the respondent's well driller permit at hearing on November 8, 1999. The Findings of Fact of the Department are adopted in full.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Wisconsin Department of Natural Resources, by

Attorney Edwina Kavanaugh
P. O. Box 7921
Madison, WI 53707-7921

Christopher J. Olson
4623 Olson Drive
Eau Claire, WI 54703

ADOPTED FINDINGS OF FACT

1. Mr. Christopher J. Olson (the respondent) is employed by Olson Bros. Well Drilling Co., Inc., 4625 Olson Drive, Eau Claire, Wisconsin, and holds well driller permit 5820 as a result of registration with the Wisconsin Department of Natural Resources (DNR) pursuant to sec. 280.15, Stats.

2. From August 24, 1992, through December 31, 1998, the respondent held well driller permit 5820 as an individual d.b.a. Eagle Well Service, 4623 Olson Drive, Eau Claire, Wisconsin.

3. The respondent constructed the wells and/or installed the pumps for the owners named, at the locations listed, and on the dates listed in Exhibit B, attached to and made a part of this order, in a manner which violated applicable provisions of Ch NR 812, Wis. Adm. Code, as also listed in Exhibit B, and summarized in Exhibit A, also attached to and made a part of this order.
4. The respondent constructed two wells less than 1200 feet from a landfill, without a variance, in violation of sec. NR 112.08(4)(g)l. or sec. NR 812 08(4)(g)l., Wis. Adm. Code. (See 1WD and 42WD of Exhibit B.)
5. The respondent constructed a well less than 1200 feet from a hazardous waste treatment facility, in violation of sec. NR 112.08(4)(g)3., Wis. Adm. Code (now sec. NR 812.08(4)(g)3., Wis. Adm. Code). (See 14WD of Exhibit B.)
6. The respondent failed to obtain the required variance to locate a well less than the minimum separation distance to a septic tank, in violation of secs. NR 812.43(1) and 812.08(b)2, Wis. Adm. Code. (See 26WD of Exhibit B.)
7. The respondent used air rotary equipment to construct the upper enlarged drillhole of three wells through caving, unconsolidated formations, in violation of sec. NR 112.14(3)(a) or sec. NR 812.14(3)(a), Wis. Adm. Code. (See 6WD, 15WD, and 40WD of Exhibit B.)
8. The respondent constructed a well so that its upper enlarged drillhole was not at least two inches larger in diameter than the nominal diameter of its well casing, in violation of sec. NR 812.12(2)(c), Wis. Adm. Code. (See 41WD of Exhibit B.)
9. The respondent used unmarked casing in the construction of a well, in violation of sec. NR 812.17(2)(b), Wis. Adm. Code. (See 44WD of Exhibit B.)
10. The respondent used improperly marked casing in the construction of a well, in violation of sec. NR 812.17(2)(d), Wis. Adm. Code. (See 45WD of Exhibit B.)
11. The respondent failed to collect a bacteriological water sample within 30 days of the completion of 37 wells, in violation of sec. NR 112.22(6)(a) or sec. NR 812.22(6)(a), Wis. Adm. Code. (See 7WD and 223WD-258WD of Exhibit B.)
12. The respondent failed to collect a bacteriological water sample within 30 days of a pump installation when he was both the well driller and the pump installer for a well, in violation of sec. NR 812.22(6)(a), Wis. Adm. Code. (See 38PI of Exhibit B.)
13. The respondent failed to notify a well owner of bacteriological contamination, in violation of sec. NR 112. 10(10), Wis. Adm. Code (now sec. NR 812. 10(10), Wis. Adm. Code). (See 8WD and 9WD of Exhibit B.)
14. The respondent failed to provide a well owner with a copy of a laboratory report of bacteriological analysis, in violation of sec. NR 812.22(6)(c), Wis. Adm. Code. (See 31WD of Exhibit B.)

15. The respondent failed to submit 90 well construction reports to the DNR, in violation of sec. NR 112.22(7)(a)1. or sec. NR 812.22(7)(a)1., Wis. Adm. Code. (See 27WD, 29WD, 32WD, 35WD, 48WD, and 53WD-222WD of Exhibit B.)

16. The respondent failed to submit 90 well construction reports to well owners, in violation of sec. NR 112.22(7)(a)2. or sec. NR 812.22(7)(a)2., Wis. Adm. Code. (See 28WD, 30WD, 33WD, 34WD, 49WD, and 53WD-222WD of Exhibit B.)

17. The respondent submitted five well construction reports to the DNR more than 30 days after the completion of the wells, in violation of sec. NR 112.22(7)(a) 1. or sec. NR 812.22(7)(a)1., Wis. Adm. Code. (See 3WD, 36WD, and 50WD-52WD of Exhibit B.)

18. The respondent submitted two well construction reports to well owners more than 30 days after the completion of the wells, in violation of sec. NR 112.22(7)(a)2. or sec. NR 812.22(7)(a)2., Wis. Adm. Code. (See 4WD and 37WD of Exhibit B.)

19. The respondent submitted 27 inaccurate and/or incomplete well construction reports to the DNR, in violation of sec. NR 112.22(7)(a) or sec. NR 812.22(7)(a), Wis. Adm. Code. (See 5WD, 16WD, 17WD, 20WD, 22WD, 24WD, 23.1WD, and 25.1WD of Exhibit B.)

20. The respondent failed to correct and/or complete and resubmit at least 19 inaccurate and/or incomplete well construction reports which the DNR returned to him, in violation of sec. NR 812.22(7)(b), Wis. Adm. Code. (See 18WD, 19WD, 21WD, 23WD, and 25WD of Exhibit B.)

21. The respondent failed to submit two well abandonment reports to the DNR within 30 days of well abandonment, in violation of sec. NR 812.26(8), Wis. Adm. Code. (See 39WD and 47WD of Exhibit B.)

22. The respondent submitted an incomplete well abandonment report to the DNR in violation of sec. NR 812.26(8), Wis. Adm. Code. (See 2WD of Exhibit B.)

23. The respondent constructed a high capacity well without prior DNR approval, in violation of sec. NR 812.09(4)(a), Wis. Adm. Code. (See 43WD.)

24. The respondent failed to inform a well owner or the DNR of noncomplying water system features, in violation of sec. NR 812.04(2), Wis. Adm. Code. (See 12PI of Exhibit B.)

25. The respondent engaged in pump installing activities without a pump installer's license on 52-62 occasions, in violation of sec. 162.04(1), Stats. (now sec. 280.15(1), Stats.) and sec. NR 146.03(1), Wis. Adm. Code. (See 10PI, 11PI, and 13PI of Exhibit B.)

26. The respondent did not display his well driller license number on one of his well drilling rigs, in violation of sec. NR 812.10(1), Wis. Adm. Code. (See 46WD of Exhibit B.)

27. The DNR repeatedly notified the respondent concerning the above violations; from November of 1994 through 1998, the respondent was sent at least six letters, four notices of noncompliance, and six notices of violations.

28. During an enforcement conference held on August 24, 1995, DNR staff discussed applicable regulations with the respondent, particularly regulations relating to minimum separation distances and well constructions reports, on August 25, 1995, DNR staff sent the respondent a letter summarizing the discussion at this enforcement conference.

29. After the enforcement conference of August 24, 1995, the respondent violated minimum separation distance requirements twice (See 26WD and 42WD of Exhibit B.), violated four well construction requirements (See 40WD, 41WD, 44WD, and 45WD of Exhibit B.), failed to collect at least 14 bacteriological water samples within 30 days of well completion (See 228WD, 231WD-233WD, and 249WD-258WD of Exhibit B.), violated two other requirements relating to bacteriological samples (See 31WD and 38PI of Exhibit B.), failed to submit well construction reports to either the DNR or the well owner for at least 52 wells (See 27WD-30WD, 93WD-102WD, 105WD, 106WD, 109WD, 110WD, 113WD-124WD, 127WD-132WD, 135WD-148WD, 151WD-168WD, 171WD, 172WD, 177WD-186WD, 189WD, 190WD, 193WD-198WD, 201WD-206WD, 211WD-216WD, and 219WD-222WD of Exhibit B.), violated at least 45 other requirements relating to well construction reports (See 18WD-25.1WD, 36WD, 37WD, and 50WD-52WD of Exhibit B.), failed to submit two well abandonment reports within 30 days of well abandonment (See 39WD and 47WD of Exhibit B.), constructed a high capacity well without prior approval (See 43WD of Exhibit B.), and failed to display his well driller license number on one of his well drilling rigs (See 46WD of Exhibit B.)

30. Based on the large number of violations and the great variety of violations of provisions of Ch. NR 812, Wis. Adm. Code, in spite of efforts by DNR staff to inform and warn the respondent, as specified in the above findings of fact, the respondent has demonstrated incompetency to act in the industry of well drilling.

31. Based on the large number of repeat violations after the respondent was repeatedly informed of regulatory requirements, the respondent has willfully violated secs. NR 812.22(7)(a)1., NR 812.22(7)(a)2., and NR 812.22(7)(b), Wis. Adm. Code.

COMMENT

The respondent indicated at hearing that he may work for his father if his well-driller's permit is revoked. If he intends to do so, the respondent needs to be under the "direct supervision" of a registered well-driller when undertaking such work. The direct supervision means the actual physical presence of the registered well-driller. A copy of this Order is accordingly being provided to Olson Brothers Well Drilling Company. Any failure to comply with the supervision requirements might be grounds for revocation of the permit of the registered well-driller or pump-installer. Further, the respondent needs to prepare an Employment Contract acceptable to the DNR prior to undertaking any such work.

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals has authority to hear contested cases and issue necessary Orders in cases involving well driller registration pursuant to sec. 227.43 and 280.13, Stats.

2. Under s. 280.11 (1), Stats., the DNR has general supervision and control of all methods of obtaining groundwater for human consumption, including sanitary conditions surrounding the same, and the construction or reconstruction of wells, and has the authority to prescribe, publish, and enforce minimum reasonable standards and rules for the methods to be pursued in the obtaining of drinking water for human consumption. Such rules are contained in Chs. NR 146 and NR 812, Wis. Adm. Code.

3. Under s. 280.13(1), Stats., the DNR may exercise such powers as are reasonably necessary to carry out and enforce the provisions of Ch. 280, Stats.

4. Under s. 280.13(2)(b), Stats., the DNR has the authority to suspend or revoke any well driller's permit if the DNR finds that the permit holder has demonstrated incompetency to act in the well drilling industry. The DNR has proven the respondent's incompetency to act in the well drilling industry by a preponderance of the evidence.

5. Under s. 280.13(2)(c), Stats., the DNR has the authority to suspend or revoke any well driller's permit if the DNR finds that the permit holder has willfully violated a second time any provision of Ch. 280, Stats., or any rule, regulation, or order prescribed by the DNR. The DNR has proven that the respondent has willfully violated such rules by a preponderance of the evidence.

6. Under secs. 280.13(4) and 281.19(2), Stats., the Division of Hearings and Appeals has the authority to issue this order.

7. This order is reasonable and necessary to accomplish the purposes of Chs. 280 and 281, Stats., and Chs. NR 146 and NR 812, Wis. Adm. Code.

ORDER

1. The respondent's well driller permit shall be revoked for a period of one year from the effective date of this order.

2. The respondent shall strictly observe all provisions of s. NR 146.09(2), Wis. Adm. Code; a copy of Ch. NR 146, Wis. Adm. Code is attached to and made a part of this order.

3. The respondent shall submit all outstanding well construction reports and all outstanding laboratory analysis reports of bacteriological samples within 60 days of the effective date of this order.

4. The respondent may not apply for a new well driller permit until he has submitted all outstanding well construction reports and all outstanding laboratory analysis reports of bacteriological samples, in accordance with all applicable provisions of law regarding form and content.

5. The respondent shall strictly observe requirements for reinstatement, including taking the required examination, as provided for in Ch. NR 146, Wis. Adm. Code, should he choose to apply for a new well driller permit after his revocation period

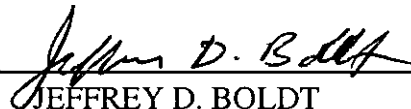
6. The respondent shall prepare an Employment Contract acceptable to the Department prior to undertaking any well-drilling or pump-installing activities under the "direct supervision" of a licensed well-driller and/or pump-installer.

7. For purposes of this Order "direct supervision" means actual physical presence by a Wisconsin registered well driller during all well drilling activity or by a Wisconsin registered pump installer during all pump installing activity.

Dated at Madison, Wisconsin on November 15, 1999.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
FAX: (608) 264-9885

By



JEFFREY D. BOLDT
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.